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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/787,195	04/17/2001	Andrew Dames	P07109US00/	6088
881	7590	08/04/2004	EXAMINER	
STITES & HARBISON PLLC 1199 NORTH FAIRFAX STREET SUITE 900 ALEXANDRIA, VA 22314			ALEXANDER, LYLE	
		ART UNIT	PAPER NUMBER	
			1743	

DATE MAILED: 08/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	d
	09/787,195	DAMES ET AL.	
	Examiner Lyle A Alexander	Art Unit 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 May 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 11-16 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/9/01
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is confusing what dimension is intended by "the largest dimension...". Clarification as to whether height, width, length or some combination of all is intended would provide clarification. For the purposes of examination it will be assumed Applicants intend the thickness of the layers is less than 100 microns.

Claims 6-7 are confusing as to how they further limit claim 1. These claims appear to be directed to method of intended use and do not further limit the structure.

Claim 10 is vague and indefinite what is intended by " a series of holes in the support". It is not clear if literal holes perforating the support are intended or merely holes in the bar code pattern. For the purposes of examination it will be assumed scoring of the surface is intended.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by EP 0395300 or Rigby et al.

EP 0395300 teach a thin film diagnostic device comprising a layer of anodized color generating material(12), a porous anodic film(14) containing aluminum oxide and a reagent capable of binding with the organic material and forming a coating(17) on the anodic film that produces a change in color. Example 3 teaches dimension of the various layers that meet the limitation of being less than 100 microns. The taught aluminum oxide has been read on the claimed aluminum surface area.

Rigby et al. teach aluminum anodized surface membrane used for biological applications. Page 3 teaches sub micron dimensions that have been read on the claimed "... less than 100 microns". -;

Claims 1-2 and 4-10 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Aurenlius.

Aurenjus teach labeling an aluminum foil surface with a bar code. The abstract teaches the thickness of the layer as 0.1mm which has been read on the claimed 100 microns. Column 9 lines 42+ teach the micro labels are anodized and died foil. Column 7 line 52 and column 13 line 61 teach aluminum foil surfaces which have also been read on the claimed porous surface. Column 14 lines 1-19 scoring of the surface is taught.

Claims 1-10 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by GB 2306484.

GB 2306484 teaches a bar code labeled solid particle. Page 9 teaches the size of the particle can be between 1 and 500 microns which has been read on the claimed range of less than 100 microns. Page 11 teaches the particles can be made of metals such as aluminum.

WO 97/12680 teaches matrices with an optically readable code. Matrix materials are used in as supports in solid phase chemical and biochemical syntheses, immunoassays and hybridization reactions. Pages 106-107 teach using an aluminum surface. The matrix materials may additionally include luminophors or other luminescent moieties to produce luminescent moieties with memories. The memories include electronic and optical storage media and also include optical memories, such as bar codes and other machine-readable codes.

#### ***Election/Restrictions***

Applicant's election with traverse of group I, claims 1-10 in the reply filed on 5/26/04 is acknowledged. The traversal is on the ground(s) that the Examiner has

misapplied the requirement of PCT Rule 13.2. This is not found persuasive because the process of group II could be used to form another product.

The requirement is still deemed proper and is therefore made FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Lyle A Alexander  
Primary Examiner  
Art Unit 1743

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